



Background Information for Presidents and Chancellors on the Recent Controversy Involving Student Loans¹

Recent controversies regarding student loan-related practices have attracted much institutional and public attention. Steps already taken by several state attorneys general, by the U.S. Department of Education (ED), and in Congress make plain that these issues will not soon be fully resolved. This document summarizes key issues, especially with respect to questioned practices and developing norms. This paper and the accompanying chart provide background, are not legal advice, and do not specify actions individual institutions should take. Legal counsel should be consulted on these legally sensitive issues.

1. What types of student loans are involved?

Two categories of student loan products are currently at issue: federal loans and private (or alternative) loans. The former are guaranteed by the federal government and are made available through campus aid offices. The latter are not federally guaranteed and may or may not involve campus aid administration.

Most federal student loans are provided through one of two programs: the Federal Family Education Loan Program (FFELP) and the William D. Ford Direct Loan Program (Direct Loan Program). Higher education institutions may participate in FFELP, the Direct Loan Program or both. Although the programs are structured differently, a significant common feature is that the government absorbs most of the risk. Through FFELP, eligible students or their parents receive loans from banks or other private lenders under terms specified by federal law. Borrowers repay the private-sector holders. The government guarantees the loans by ensuring that holders are reimbursed for unpaid principal if the borrower defaults. Through the Direct Loan Program, the government provides loans to borrowers using federal capital, and it owns the loans. Borrowers repay the federal government directly.

Increasingly, parents and students also finance education through private consumer loans from banks and other private lenders.² While federal regulations limit the terms of FFELP loans, private loan products can be tailored to a borrower's particular circumstances in terms of repayment options, risk level, rewards, and services. Often, however, the credit history of the borrower and/or the borrower's co-signer affects the terms of private loans, which carry more risk because they are not federally guaranteed.

2. Which institutional offices are most directly involved with student loans?

University and college financial aid offices function as the main interface between student borrowers and lenders. Financial aid offices provide students and their families information on financial assistance, assess levels of need, and develop and process aid packages that may include, for example, grants, work-study, and loans. Before a lender may disburse a federal education loan, the college or university must certify the student's eligibility and certain other matters.

Financial aid offices also manage relations with government and private lenders. At many colleges and universities, officials use a preferred lender list to recommend lenders to students. In developing a preferred lender list, financial aid administrators may evaluate interest rates, fees, quality of customer service, borrower benefits, collection and default management, and reputation. Proponents assert that preferred lender lists help students negotiate the vast array of loan products and, by simplifying the loan process, reduce the institution's administrative burdens. Critics contend that such lists limit borrower choice and may not lead borrowers to the best available product, in part because some borrowers select lenders from the list without additional research. Lenders often compete vigorously for placement on an institution's preferred lender list.

3. What legal framework applies to student loans and the relationships between universities and lenders?

The Higher Education Act of 1965, as amended (HEA), governs federal loan programs.³ ED has promulgated implementing regulations and has issued pertinent guidance to interpret federal requirements. Three HEA precepts are especially relevant to the current student loan controversies:

- **Preferred lender lists and borrower choice:** Colleges and universities can have preferred lender lists to help students choose a FFELP lender. However, an institution shall not insist that borrowers use only listed lenders. Nor can schools delay certification of a student's eligibility for a FFELP loan or otherwise engage in activities that impede a borrower's access to a FFELP loan simply because he or she selected a particular lender.⁴
- **Anti-inducement prohibition:** HEA forbids lenders and guaranty agencies from offering directly or indirectly payments or other incentives to institutions or individuals in order to secure FFELP loan applicants. To date, ED has not issued regulations that elaborate where the line should be drawn between prohibited inducements and permissible activities, but ED has issued guidance that does not have the effect of regulations⁵ and, as described below, is drafting new regulations.
- **School-as-lender program:** Under the school-as-lender program, colleges and universities can serve as FFELP lenders. As an FFELP lender, a school is subject to restrictions that do not apply to private lenders. For instance, it may provide FFELP loans to graduate and professional students but generally not to undergraduates, and revenue that an institution earns on FFELP loans may only be used for administrative expenses or to supplement, not supplant, institutional spending on need-based grants.⁶ An institution shall not insist that borrowers use only the school as lender.⁷ In 2006, Congress curtailed expansion of the school-as-lender program and limited further the ability of universities and colleges, and their affiliated organizations, to function as FFELP lenders.⁸

The HEA is generally inapplicable to private student loans except possibly to the extent that they are tied to federally guaranteed loans and thus raise anti-inducement issues. However, other state and federal laws, including consumer protection statutes, may apply to private loans.

4. How did the state attorneys general investigations begin?

In November 2006, New York Attorney General (NYAG) Eliot Spitzer opened an investigation into potential conflicts of interests within the higher education student lending industry. When Spitzer became Governor of New York, his successor, Andrew Cuomo, assumed control over the investigation. In February 2007, Cuomo expanded the investigation's scope and sent information requests to additional

lenders and to more than 60 public and private colleges and universities in New York and other states.⁹ The investigation has thus far reached at least six lenders¹⁰ and, according to the NYAG, more than 100 colleges and universities. At present, state attorneys general have announced inquiries into these issues in at least seven additional states—Arizona, California, Connecticut, Illinois, Massachusetts, Minnesota, and Missouri.

5. What substantive issues have been the focus of the NYAG's investigation?

The NYAG's information requests touch on a broad array of issues, but focus mainly on the following: (a) methods that colleges and universities use to assemble and manage preferred lender lists, and the role lenders play in that process; (b) lenders' provision of items of value—including expense-paid trips, meals, gifts, entertainment, compensation, equipment, services, and staffing—to institutions or institutional employees; (c) lenders' provision of "opportunity funds," "opportunity loans," or "override pools" to enable institutions to make available loans to borrowers whose risk profiles might otherwise make them ineligible for private loans; (d) interference with borrowers' free choice among lenders and loan products; (e) revenue-sharing arrangements through which a lender pays an institution a percentage of revenue from loans originated at the institution; and (f) lenders' use of institutional employees on advisory boards or panels. The information requests also cover the school-as-lender program, Direct Lending Program, and problems institutions or borrowers have experienced with lenders.

On March 15, 2007, the NYAG issued a press release detailing "deceptive practices" uncovered through his investigation to that point.¹¹ In conjunction with that release, the NYAG sent letters to presidents of more than 400 colleges and universities, including every institution in New York and institutions outside New York. The letters addressed certain student lending activities and recommended specific action to improve institutional practices.¹² In addition, the NYAG released a brochure to educate students and parents regarding the student lending industry.¹³ The attached chart describes certain practices that the press release and letter to colleges and universities stated or suggested are "problematic."

6. What other types of conduct have been questioned?

In early April 2007, the New America Foundation reported that, according to Securities and Exchange Commission filings, financial aid directors at three universities and a senior ED official involved in FFELP lender oversight personally owned stock in the parent corporation of a student loan company that each institution had placed on its preferred lender list. The institutional officials reportedly received stock options from the company as compensation for service on an advisory board. The NYAG subsequently expanded his investigation to include these and related matters, such as consulting and other payments to institutional employees, at these three universities and other institutions. He is also looking into matters related to ED employees who previously worked for lenders. In addition, Sen. Edward Kennedy (D-MA), Chairman of the Senate Committee on Health, Education, Labor and Pensions, and Rep. George Miller (D-CA), Chairman of the House Committee on Education and Labor, recently announced that they have asked ED for information related to relationships between lenders and ED officials.

7. What enforcement action, if any, has the NYAG taken to date?

On March 22, 2007, the NYAG announced the first enforcement action to arise from his investigation through a press release,¹⁴ and notice of his intent to sue was issued to Education Finance Partners (EFP), a student loan company based in California.¹⁵ The target of the action is EFP's revenue-sharing

arrangements with, according to the NYAG, more than 60 colleges and universities across the United States. Under such arrangements, institutions received payment from EFP based on loan volume, which they reportedly usually used for need-based student aid. The NYAG also asserts that EFP's use of school colors, logos, and mascots in promotional materials distributed at educational institutions amounts to deceptive marketing because it conveys implied institutional endorsement.

8. What did the NYAG settlement agreements entail?

On April 2, 2007, an NYAG press release announced the first settlements arising out of his investigation.¹⁶ Included in the settlements were at least eight universities or systems.¹⁷ At least six of the institutions agreed as part of settlement to make payments that collectively total more than \$3.2 million to their student borrowers who took out private loans during a period in which the institution participated in a revenue-sharing agreement with the students' lender. The NYAG disclosed the settlement agreements with New York University and the University of Pennsylvania.¹⁸ In identical sections titled "Industry-Wide Findings," those agreements set out what the NYAG characterizes as "common practices" in the student lending industry. These include asserted shortcomings in the substance of and disclosures surrounding preferred lender lists, interference with borrower choice, exclusive consolidation loan marketing agreements, undisclosed loan sales, and institutional conflicts of interest arising out of revenue-sharing arrangements, expense-paid travel, appointment of school officials to lender boards or panels, lenders' provision of staff and services to institutions, and lenders' provision of opportunity loans. Each disclosed settlement agreement also includes a Code of Conduct, which the institutions agreed to adopt.¹⁹ The attached chart summarizes Code of Conduct provisions contained in the disclosed settlement agreements. The NYAG has also announced settlements with Citibank and Sallie Mae.²⁰

9. What is Congress doing about these student lending issues?

On February 1, 2007, Sen. Kennedy and other senators introduced the "Student Loan Sunshine Act" (Sunshine Act). Several days later, Rep. Miller and other representatives introduced companion legislation in the U.S. House of Representatives.²¹ The Sunshine Act would regulate relationships between institutions and lenders with respect to federal and private loans through disclosure requirements and bans on such lender practices as provision of financial and other benefits to institutions or institutional personnel. The attached chart summarizes selected Sunshine Act provisions. To date there has been no action on the proposed legislation.

Shortly after the Sunshine Act was introduced, the Senate and House launched investigations of student lending practices. On March 21, 2007, Senator Kennedy sent information requests to 16 lenders, in part to determine whether they offered benefits to colleges and universities and/or their officials in exchange for preferential treatment. Seven days later, Representative Miller sent information requests to five student loan providers regarding their relationships with financial aid offices, including any efforts to encourage higher education institutions to participate in FFELP and not the Direct Loan Program.²² Recently, the House Committee announced an April hearing at which the NYAG is expected to testify.

10. What is the Department of Education doing about student lending?

In December 2006, ED began a "negotiated rulemaking" process that is still ongoing to amend regulations pertinent to federal student loan programs, including preferred lender lists and prohibited

inducements. The goal of negotiated rulemaking is to develop regulations acceptable to constituencies represented by the negotiators. The negotiating committee includes, in addition to federal negotiators, employees of lenders and schools, as well as consumer advocates and students. ED's draft regulations contain provisions similar but not identical to those in the proposed Sunshine Act and the NYAG Code of Conduct. The attached chart summarizes pertinent provisions in ED's most recent draft of the proposed regulations.²³ Those draft provisions will likely change before they are adopted.

In addition, on March 29, 2007, ED issued written guidance in response to complaints that some colleges and universities have refused to certify loans because borrowers have selected particular lenders.²⁴ The guidance stresses that such practices violate the HEA. It also reminds institutions that failure to comply with the HEA could trigger fines or other administrative action. ED also recently announced creation of a team to conduct targeted program reviews and investigate complaints about student loan practices, including preferred lender lists.²⁵

April 16, 2007

¹ This paper was written by Stephanie Gold, Martin Michaelson, Joshua Civin, and Matthew Ballenger of the Washington, D.C. law firm Hogan & Hartson L.L.P.

² College Board, Trends in Student Aid at 5 (2006).

³ See 20 U.S.C. § 1070 et seq.

⁴ See 34 C.F.R. § 682.603(e); U.S. Department of Education, Dear Colleague Letter GEN-07-01, FP-07-04 (Mar. 29, 2007); see also 20 U.S.C. §§ 1082(m)(1)(B)(ii), 1087tt(c).

⁵ See U.S. Department of Education, Dear Colleague Letter 95-G-278, 95-L-178, 95-S-73 (Mar. 1, 1995); U.S. Department of Education, Dear Colleague Letter 89-L-129, 89-S-55, 89-G-157 (Feb. 1989).

⁶ See 20 U.S.C. § 1085(d)(7).

⁷ See U.S. Department of Education, Dear Colleague Letter GEN-07-01, FP-07-04 (Mar. 29, 2007).

⁸ See Higher Education Reconciliation Act, Pub. L. 109-171, § 8011, 120 Stat 4, 165-66 (2006); Third Higher Education Extension Act, Pub. L. 109-292, § 3, 120 Stat 1340, 1340-41 (2006).

⁹ According to the NYAG, each of the institutions that received the information requests enrolls students from New York. The [press release](#) that announces expansion of the investigation can be found on the NYAG web site.

¹⁰ The six lenders identified publicly are Education Finance Partners ("EFP"), Sallie Mae, Nelnet, EduCap, the College Board, and Citibank.

¹¹ The [press release](#) can be found on the NYAG web site.

¹² The NYAG's [letter](#) can be found on its web site.

¹³ The [brochure](#) can be found on the NYAG web site.

¹⁴ The [press release](#) can be found on the NYAG web site.

¹⁵ Pursuant to N.Y. Gen. Bus. Law §§ 349 and 350, the NYAG is required to provide the target of any proposed enforcement action with five days advance written notice of its intent to file suit and an opportunity to respond. The [notice letter](#) can be found on the New York state web site.

¹⁶ The [press release](#) can be found on the NYAG web site.

¹⁷ The institutions publicly identified by the NYAG included the State University of New York, Fordham University, Long Island University, New York University, St. Lawrence University, Syracuse University, St. John's University, and University of Pennsylvania.

¹⁸ Those agreements can be found [here](#) and [here](#).

¹⁹ The Code of Conduct can be found within the text of the settlement agreements at the sites identified above. The NYAG has also prepared a [one-page summary](#) of the Code of Conduct.

²⁰ Citibank and Sallie Mae each agreed to pay \$2 million into a fund administered by the NYAG to educate students and parents about the student lending industry. Citibank reportedly also agreed to adhere to the principles set forth in the institutional Code of Conduct. Sallie Mae agreed to adopt a lender Code of Conduct. See the NYAG [press release](#) regarding the Sallie Mae settlement, which includes a copy of the agreement.

²¹ Press releases that announce introduction of this legislation can be found [here](#) and [here](#). Other legislation pertinent to student lending issues includes a bipartisan bill to encourage higher education institutions to participate in the Direct Loan Program rather than FFELP. See [Press Release](#) (Feb. 15, 2007).

²² The press releases that announce these investigations can be found [here](#) and [here](#).

²³ See ED's most recent [draft regulatory language](#).

²⁴ See U.S. Department of Education, Dear Colleague Letter GEN-07-01, FP-07-04 (Mar. 29, 2007).

²⁵ See Kelly Field, U.S. Officials Scrutinize Colleges' Deals with Lenders, CHRON. OF HIGHER EDUC., Apr. 6, 2007.



American Council on Education

New York Attorney General Code of Conduct, Proposed Federal Legislation and Regulations, and Potentially Implicated Practices¹

April 16, 2007

Code of Conduct ²	Selected provisions of proposed federal Sunshine Act ³	Selected provisions of proposed federal regulations ⁴	Examples of potentially implicated practices ⁵
Prohibits certain remuneration to institutional employees: Institutions shall ensure that no officer, trustee, director, employee or agent accepts anything of more than nominal value from a "lender" ⁶ on his or her own behalf or on behalf of another, including any payment or reimbursement by the lender to an institutional employee for lodging, meals or travel to conferences or training seminars. EXCEPTIONS:	<p>Forbids lenders from:</p> <ul style="list-style-type: none"> • offering gifts—including travel, lodging, entertainment, and in-kind services—worth more than \$10 to employees or agents of educational institutions. <p>Permits lenders to provide:</p> <ul style="list-style-type: none"> • informational brochures. • favorable terms on loans. • food incidental to training or advisory sessions. 	<p>Forbids lenders from:</p> <ul style="list-style-type: none"> • paying entertainment expenses for institutional employees, such as sporting event tickets, meals, beverages, lodging or transportation. • paying for conference or training registration, transportation or lodging costs for an employee of an institution or a school-affiliated organization. <p>Expressly permits lenders to provide:</p> <ul style="list-style-type: none"> • meals, refreshments, and receptions in conjunction with meetings, trainings or conference events open to all attendees. • gifts of nominal value to school-affiliated organizations and to borrowers. 	<ul style="list-style-type: none"> • Preferred lender lists that include lenders that offered, or were solicited to offer, financial or other benefits to the institution or its borrowers in exchange for inclusion on the list. • Lenders paying for trips for financial aid officers (and their spouses). • Lenders providing meals, gifts or entertainment of more than nominal value to institutional employees. <ul style="list-style-type: none"> • Institutional employees receiving remuneration or expense-reimbursement for service on a lender's advisory board.
Limits institutional employees' participation on lenders' advisory boards: Institutions shall forbid any officer, trustee,	Not explicitly addressed.	Not explicitly addressed.	

Code of Conduct²	Selected provisions of proposed federal Sunshine Act³	Selected provisions of proposed federal regulations⁴	Examples of potentially implicated practices⁵
<p>director, employee or agent from receiving remuneration or expense-reimbursement for serving as a member of a lender's advisory board.</p> <p>EXCEPTIONS:</p> <ul style="list-style-type: none"> • Allows participation on advisory boards unrelated in any way to higher education loans. • Allows institutional officers, trustees, directors, employees or agents who are uninvolved in the financial aid office to serve on the board of directors of a publicly traded or privately held company. 	<p>Prohibits certain remuneration to the institution: Institutions may not accept on their own behalf anything of value from any lender in exchange for any advantage or consideration provided to the lender related to its education loan activity. The prohibition includes:</p> <ol style="list-style-type: none"> (i) "revenue sharing" by a lender with an institution; (ii) an institution's receipt of computer hardware at below-market prices; and (iii) printing services at below-market prices. <p>EXCEPTION: Institutions may accept assistance as contemplated in 34 C.F.R. § 682.200(b)(5)(i), which permits lenders to provide assistance to an institution that is comparable to the assistance provided by the U.S. Department of Education to institutions in the Direct Loan Program.</p>	<p>Forbids institutions from entering into arrangements that permit a lender to "brand" the lender's loan product with the institution's name, emblem or logo.</p> <p>Requires lenders to report to the U.S. Department of Education any special loan arrangements they have with colleges, including any terms of the arrangement related to marketing, recommending, or endorsing student loans, and any benefit, direct or indirect, provided to or paid to any party in connection with the arrangement.</p> <p>Requires the U.S. Department of Education, together with the higher education community and students, to develop an easy-to-use model format for reporting the terms and conditions of student loans, similar to the APR disclosure required for other types of loans.</p>	<ul style="list-style-type: none"> • Financial arrangements between institutions and lenders, such as revenue sharing and referral fees. • Lenders providing computers or other equipment to an institution at low or no cost. • Lenders providing printing or publication services to an institution at low or no cost. • payments or other benefits, including prizes or additional financial aid funds, to students; • payments to students who act as a lender's representatives in securing federal loans; • payments to sales representatives who visit schools to solicit individual borrowers; • payments of unreasonable referral or compensation fees to other lenders for administering or marketing federal loans; and • undertaking philanthropic activities, including providing scholarships, grants or other contributions to institutions.

Code of Conduct²	Selected provisions of proposed federal Sunshine Act³	Selected provisions of proposed federal regulations⁴	Examples of potentially implicated practices⁵
	<p>Conditions use of preferred lender lists: In the event that an institution promulgates a list of preferred or recommended lenders, then:</p> <ul style="list-style-type: none"> (a) Every brochure, web page or other document that sets forth the preferred lender list must clearly disclose the process by which the institution selected lenders for the list, including the criteria used and their relative importance; (b) Every brochure, web page or other document that sets forth the preferred lender list or identifies any lender as being on the list must state in the same font and manner as the predominant text in the document that students and parents have a right to select the lender of their choice, are not required to use any lenders on the preferred lender list, and will suffer no penalty for choosing a lender not on the list; <p>(c) The institution's decision to include a lender on any preferred lender list and its decision as to where on the list the lender's name appears shall be determined solely based on the best interests of students and parents without regard to the institution's pecuniary interests;</p>	<p>Specifies practices that are permitted under the Higher Education Act's anti-inducement provision, including but not limited to:</p> <ul style="list-style-type: none"> • reduced origination fees, lower interest rates, and repayment incentive programs for borrowers. 	<ul style="list-style-type: none"> • Failure to disclose (a) bases for selection of lenders for a preferred lender list, (b) that borrowers have a right to select the lender of their choice without penalty, (c) specific benefits to students or parents of using preferred lenders (e.g., competitive upfront rates, repayment benefits, service), or (d) whether any preferred lenders are affiliated or have agreements with each other to sell loans. • Placement on a preferred lender list of a lender who has failed to provide reasonable assurances that advertised repayment benefits will travel with a loan if the loan is subsequently sold on the secondary market. • Placement of a lender on a preferred lender list for reasons other than the borrower's best interests, including an institution's pecuniary interests. • Failure to review a preferred lender list at least annually.

Code of Conduct²	Selected provisions of proposed federal Sunshine Act³	Selected provisions of proposed federal regulations⁴	Examples of potentially implicated practices⁵
<p>(d) The preferred lender list shall be reviewed at least annually;</p> <p>(e) No lender shall be placed on any preferred lender list unless it provides assurance that advertised benefits upon repayment will continue to inure to the benefit of borrowers regardless of whether it sells the loans;</p> <p>(f) No lender that, to the institution's knowledge after reasonable inquiry, has an agreement to sell its loans to another unaffiliated lender shall be included on a preferred lender list unless such agreement is disclosed in the same font and manner as the predominant text in the document in which the list appears;</p> <p>(g) No lender shall be placed on a preferred lender list or in a favored placement on such a list for one type of loan in exchange for benefits provided to the institution or its students in connection with a different type of loan.</p>			<ul style="list-style-type: none"> Placement of lenders on the preferred lender list in exchange for benefits regarding a separate loan product.
			<ul style="list-style-type: none"> Arrangements pursuant to which lenders operate "call center" for an institution, or lead borrowers who call designated financial aid help-lines to believe that they are speaking with a school financial aid counselor when they are speaking with a representative of a lender who may have an incentive to provide information that favors the lender. Lenders providing staffing assistance at institutional financial aid facilities.

Code of Conduct²	Selected provisions of proposed federal Sunshine Act³	Selected provisions of proposed federal regulations⁴	Examples of potentially implicated practices⁵
Conditions form of execution of master promissory notes: The institution may not link or otherwise direct potential borrowers to any electronic master promissory note or other loan agreement in an electronic format that incorporates any preferred lender list or similar device into the electronic medium, including any drop-down menus of possible lenders for the student to select. Students must be presented with the opportunity to enter the code or name for any lender that offers the relevant loan product.	Not explicitly addressed.	Not explicitly addressed.	<ul style="list-style-type: none"> Denials or impediments to a borrower's choice of a lender through, for example, statements that borrowers are required to use preferred lenders. Use of loan applications or agreements structured or formatted in a way that limits or otherwise directs borrowers to particular lenders.
Conditions on school-as-lender participants: If an institution participates in the school-as-lender program, it may not treat school-as-lender loans differently than loans originated by another lender; and all Code of Conduct provisions apply equally to school-as-lender loans as if the loans were provided by another lender.	Not explicitly addressed.	Not explicitly addressed.	<ul style="list-style-type: none"> Failure to disclose that an institution may sell loans made under the school-as lender program. Interference with a borrower's ability to select an alternative lender or loan product.
Prohibition of Opportunity Loans: An institution may not arrange with lenders to provide Opportunity Loans if provision of Opportunity Loans prejudices another borrower, except that an institution may offer loans to international students, at fair market rates, who would be otherwise unable to secure a domestic loan.	Not explicitly addressed.	Not explicitly addressed.	<ul style="list-style-type: none"> Lenders providing funds or credit lines which permit an institution to allocate loans to borrowers whose credit profile might make them otherwise ineligible, to the detriment of other borrowers.
Not explicitly addressed.	<ul style="list-style-type: none"> Requires lenders of private educational loans to clearly state that borrowers may qualify for low-interest federal loans; how interest rates are determined; sample loan costs disaggregated by type; fee information; 	Not explicitly addressed.	<ul style="list-style-type: none"> Failure to encourage students and parents to seek federal loans over private loans.

Code of Conduct²	Selected provisions of proposed federal Sunshine Act³	Selected provisions of proposed federal regulations⁴	Examples of potentially implicated practices⁵
	<ul style="list-style-type: none"> information on default; and Better Business, state consumer agency or state attorney general complaints against the lender. Before lenders can offer an education loan of more than \$1000, requires notification to the borrower's institution, so it can advise the borrower if the loan exceeds what is necessary to cover the cost of attendance after other aid is factored. Bars lenders from offering private loans through an institution until the institution informs students of all options under federal loan programs -- including terms of more favorable federal loans. 		

¹ This chart summarizes selected aspects of the New York Attorney General's (NYAG) Code of Conduct as published in recent settlement agreements, pending federal legislation, and proposed draft amendments to U.S. Department of Education regulations. The chart does not address comprehensively such matters, nor does the chart address current federal law that may be pertinent to such matters. In addition, the chart summarizes certain activities on which state and federal regulators have focused, but it does not address all activities that might implicate current or pending state or federal law.

² This column summarizes Code of Conduct provisions in the University of Pennsylvania and New York University settlement agreements, which the NYAG released on April 2, 2007 and posted on its [website](#). The NYAG is not legally committed to such provisions with respect to other institutions and may impose different codes, or may articulate differently certain code provisions, with respect to other institutions, either through settlement agreements or other actions.

³ The information in this column is based on proposed federal legislation titled the Student Loan Sunshine Act. See the press releases announcing the introduction of this legislation in the [Senate](#) and [House of Representatives](#).

⁴ The information in this column is based on draft regulations that the U.S. Department of Education has proposed as part of negotiated rulemaking and has posted on its [website](#). The U.S. Department of Education has stated in the preamble to the draft regulations that they "reflect guidance provided by the Department in 'Dear Colleague' Letters published in 1989 and 1995 and other guidance provided in response to individual inquiries received by the Department since the [anti-inducement] prohibitions were first enacted into law."⁶ The draft regulations continue to be discussed as part of negotiated rulemaking and may change before they are proposed officially or promulgated in final form.

⁵ The practices described here are illustrative and non-exhaustive. They are based on (a) the Code of Conduct itself, (b) the NYAG's industry-wide findings contained in the University of Pennsylvania and New York University settlement agreements, and (c) the NYAG's March 15, 2007 press release, letter to universities and colleges, and Student Lending Brochure.

⁶ The chart uses the term “lender” to encompass any “Lending Institution” as defined in the New York University and University of Pennsylvania settlement agreements. Those settlement agreements define a “Lending Institution” as “(a) Any entity that itself or through an affiliate engages in the business of making loans to students, parents or others for purposes of financing higher education expenses or that securitizes such loans; or (b) Any entity, or association of entities, that guarantees education loans; or (c) Any industry, trade or professional association that receives money from any entity described above in subsections a and b.”